

Ken Bourkland :
-vs- : 06-0726
Commonwealth Edison Company :
Complaint as to service in St. Charles, :
Illinois. :

**RESPONDENT'S MOTION TO STRIKE COMPLAINANT'S
RESPONSE TO COMPANY'S INITIAL BRIEF**

Now comes the Respondent, Commonwealth Edison Company ("Respondent" or "ComEd"), by and through its attorney, Mark L. Goldstein, and files this Motion to Strike the Complainant's Response to Company's Initial Brief in the above captioned matter ("Complainant's Brief").


In ComEd's Initial Brief, Respondent reserved the right to file a response to Complainant's Brief. Since Complainant's Brief seeks to respond to ComEd's Initial Brief, it must be considered to be Complainant's Reply Brief in this proceeding.

ComEd moves to strike Complainant's Brief because Complainant's seeks to introduce into the record of this proceeding additional evidence, that is, not only the measurement of the Bourkland secondary line taken by Western Surveying & Engineering, P.C. ("Western") on February 20, 2008, but also a subsequent measurement of the primary line taken on February 25, 2008. The evidentiary portion of this proceeding has concluded. Complainant had ample opportunity over the past year or more to hire a professional engineer and present such evidence, subject to cross-examination, at an evidentiary hearing in this matter. To present the Western height measurement is highly improper, denies ComEd procedural due process, is contrary to the rules of evidence, and should not be countenanced.

ILLINOIS
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Therefore, for the above reasons, Complainant's Brief should be stricken. Accordingly, Respondent, Commonwealth Edison Company, respectfully moves the Administrative Law Judge to strike Complainant's Response to Company's Initial Brief.

Respectfully submitted,
Commonwealth Edison Company

By: 
Mark L. Goldstein, Its Attorney

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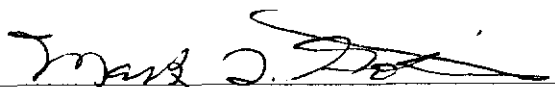
STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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NOTICE OF FILING

TO: Parties on Certificate of Service

PLEASE TAKE NOTICE that on February 25, 2008, I filed with the Chief Clerk of the Illinois Commerce Commission the Respondent's Motion to Strike Complainant's Response to Company's Initial Brief, attached hereto, a copy of which is hereby served upon you.



Mark L. Goldstein, Attorney for Respondent
108 Wilmot Road, Suite 330
Deerfield, IL 60015
(847) 580-5480

CERTIFICATE OF SERVICE

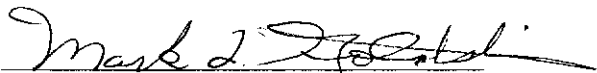
I hereby certify that on December 25, 2008, I served a copy of the Respondent's Motion to Strike Complainant's Response to Company's Initial Brief, by causing copies thereof to be mailed by U. S. Mail, first class postage prepaid, to each of the parties as indicated below:

Ms. Elizabeth A. Rolando
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Mark L. Goldstein